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Federal Communications Commission
Office of the Secretary

Cincinnati Bell℠

221 E. Fourth St.
P.O. Box 2301
Cincinnati, Ohio 45201-2301

September 11, 2009

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.,
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

In the Matter of:	)
	)
Petition of the Cincinnati Bell Telephone Company LLC	)
for Waiver From Application of the Equal Access	)
Scripting Requirement	)

ATTN: Wireline Competition Bureau

Dear Ms. Dortch:

Enclosed are an original and four copies of Cincinnati Bell Telephone Company LLC's Petition for Waiver from the Equal Access Scripting Requirement provisions of the Commission's rules. A duplicate original copy of this letter and Petition is provided; please date stamp this copy as acknowledgment of its receipt and return it. Questions regarding this filing may be directed to me at the above address or by telephone at (513) 397-6671.

Sincerely,

Patricia L. Rupich

Patricia L. Rupich
Senior Manager -- Regulatory

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)
	)
Petition of the Cincinnati Bell Telephone Company LLC	)
for Waiver From Application of the Equal Access	)
Scripting Requirement	)

PETITION OF CINCINNATI BELL TELEPHONE COMPANY LLC FOR WAIVER FROM APPLICATION OF THE EQUAL ACCESS SCRIPTING REQUIREMENT

Pursuant to § 1.3 of the Commission's rules,[1] Cincinnati Bell Telephone Company LLC ("CBT") hereby petitions the Commission to waive application of the Equal Access Scripting Requirement ("EA Scripting Requirement") as it applies to CBT.

I. Introduction.

The EA Scripting Requirement was originally created pursuant to the Modified Final Judgment ("MFJ") and applied only to the Bell operating companies ("BOCs"). In 1985 it was expanded to the remaining carriers. The requirement was preserved by § 251(g) of the Telecommunications Act of 1996.[2] Under the EA Scripting Requirement, incumbent local exchange carriers ("ILECs") must inform new customers that they have a choice of long distance providers and, if requested, read a randomized list of available long distance providers. In 2007, the Commission relieved the BOCs of this requirement via a grant of forbearance.[3] The requirement was waived as to their affiliated independent ILECs. However, the EA Scripting

[1] 47 C.F.R. § 1.3.
[2] 47 U.S.C. § 251(g).
[3] *In the Matter of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services,* WC Docket No. 06-120, FCC 07-159 (released August 31, 2007) ("AT&T Forbearance Order").

Requirement was retained for all other incumbent local exchange carriers ("ILECs"), including CBT. The EA Scripting Requirement does not apply to other providers of voice services, such as wireless, cable, CLECs or VoIP providers. In this petition, CBT demonstrates that continued application of the EA Scripting Requirement to CBT is no longer necessary or appropriate.

II. Basis for Waiver

The Commission's rules may be waived for good cause shown.[4] Waiver is appropriate when circumstances warrant a deviation from the general rule, and a waiver will serve the public interest.[5] The Commission may also exercise its discretion to waive a rule where the facts make strict compliance inconsistent with the public interest.[6] The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy. For these reasons, the Commission should exercise its authority to waive EA Scripting for CBT.

When the Commission granted the BOCs and their affiliates relief from the EA Scripting Requirement, it rejected a request from ACS to extend relief to all independent ILECs, citing the lack of record regarding these carriers and the potential for significant differences in competitive circumstances.[7] Since that time, the United States Telecom Association ("USTA") has filed a petition on behalf of its members asking the Commission to waive the EA Scripting Requirement.[8] In its petition, the USTA reviewed the current state of the market for long distance services, citing the widespread availability of cable voice service that bundles local and long distance, wireless providers' bundled local and long distance offerings, and the over-the-top

[4] 47 C.F.R. § 1.3.
[5] *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990), *citing WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969).
[6] *Id.*
[7] AT&T Forbearance Order, ¶ 126.
[8] In the Matter of Petition of the United States Telecom Association for Waiver From Application of the Equal Access Scripting Requirement, WC Docket No. 08-225 (filed Nov. 10, 2008) ("USTA Petition").

VoIP providers that enable subscribers to place calls nationally and internationally. The data USTA provided is applicable nationwide and is as applicable to the Cincinnati market as it is to the markets served by USTA's members. Accordingly, CBT will not repeat the same information, but rather incorporates the USTA data concerning the state of the marketplace by reference herein.[9]

III. Competition in the Cincinnati Marketplace

The market in CBT's service area, which encompasses Greater Cincinnati, Southwest Ohio, Northern Kentucky and a small portion of Southeastern Indiana, mirrors the national competitive landscape. CLECs, cable companies, wireless providers and over-the-top VoIP providers are all serving customers in the Cincinnati market. CBT's access lines have declined by almost 35% since 2000 as alternative providers have entered the market.[10] Since 2006, in both Ohio and Kentucky, the level of competition has been determined by the states to be sufficient to warrant significant deregulation of CBT's intrastate services.[11] Additional evidence that long distance traffic is moving off of the ILECs' networks is the decline in switched access minutes of use. CBT's local switched access minutes have been declining for several years with the rate of decline increasing significantly in recent years.[12] These losses of access lines and minutes are the result of customers leaving CBT's network for alternative providers that are active throughout CBT's territory including:

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[9] *See* USTA Petition, pp. 10-20.

[10] CBT ARMIS Report, 43-01, Table II for years 2000 – 2008 and Cincinnati Bell Inc., 10-Q, August 6, 2009.

[11] *In the Matter of the Application of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Telephone Companies*, Public Utilities Commission of Ohio, Case No. 05-1305-TP-ORD, Opinion and Order (Mar. 7, 2006). *Kentucky Emerging Technology and Consumer Choice Act*, HB 337, 2006 Ky. Acts ch. 239, K.R.S. § 278.541 *et seq.*

[12] CBT Annual Price Cap Tariff Review Plans, Table RTE-1.

- Cable -- Time Warner Cable ("TWC") and Insight aggressively compete for customers throughout CBT's territory offering plans that provide unlimited local and long distance calling. TWC's footprint covers CBT's Ohio service area, while Insight covers the Kentucky service area. Although Cincinnati specific data is not available, TWC reports that it has deployed its Digital Phone service to nearly 100% of the homes passed by its cable system which includes five geographic areas – New York, the Carolinas, Ohio, southern California and Texas[13] and that it has an overall Digital Phone penetration of 15.4% as of June 30, 2009.[14] Insight, which serves only three states (the majority of its customers are in Kentucky, although it also serves communities in Southern Indiana and Columbus, Ohio), reports that its phone service is available throughout 94% of its footprint and that it had record net phone additions in 2008, taking it to a 21% voice service penetration level.[15]
- Wireless— Wireless service is as well established in the Greater Cincinnati area as it is in other major metropolitan areas of the country. There are five unaffiliated facilities-based wireless providers (AT&T, Verizon Wireless, Sprint, T-Mobile, and Cricket) serving customers throughout CBT's territory[16] as well as numerous wireless resellers. All of these providers offer plans that bundle local and long distance calling. As is the national trend, consumers in the Cincinnati market are availing themselves of these wireless long

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[13] Time Warner Cable Inc. Form 10-K for the Period Ending December 31, 2008, available at http://files.shareholder.com/downloads/TWC/721743800x0xS950144-09-1480/137013/filing.pdf.
[14] Time Warner Cable News Release, 2009 Second-Quarter Results, July 29, 2009, available at http://ir.timewarnercable.com/releasedetail.cfm?ReleaseID=399666.
[15] JP Morgan Conference Presentation, February 2, 2009, available at http://www.insight-com.com/5579.htm.
[16] CBT's local service territory includes wireless license areas MTA018, CMA023 and CMA145, BEA049 and BTA081.

distance options. As the Commission reported in its most recent Wireless Competition Report, multiple surveys estimate that between 15.8% and 18% of households were wireless-only by 2008.[17] Furthermore, even consumers who have not completely "cut the cord" are undoubtedly using their wireless phones for long distance calling when they have plans that include long distance usage. Consumers in Cincinnati are likely to mirror these national trends.

- Over-the-Top VoIP—Over-the-top VoIP services such as Vonage and Skype are as readily available in CBT's territory as they are elsewhere. Each of the major broadband providers serving the greater Cincinnati area report high-speed Internet penetration levels above 30%.[18] The over-the-top VoIP services are readily available to any broadband subscriber for making long distance calls as they are not location specific.

The evidence shows that most customers prefer bundled local and long distance service. In addition to consumers who are clearly migrating to alternative providers' bundled offerings, the majority of ILEC customers, including CBT's customers, opt for bundled plans that include long distance. The Commission's Local Competition Report indicates that 66% of ILEC residential and 49% of ILEC business customers purchase long distance from the ILEC.[19] Of those who do not opt for CBT's bundled offerings, 50 percent have no preferred long distance provider, indicating that they are using calling cards, accessing long distance via dial-around, or are simply not using their landline phone for long distance calling.

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[17] *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 08-27, DA 09-54 (released Jan. 16, 2009), at ¶ 230.

[18] Insight 35% broadband penetration-- JP Morgan Conference Presentation, February 2, 2009; TWC 34% broadband penetration-- TWC 2009 Second-Quarter Results; CBT's broadband penetration is 48% of its residential base--Cincinnati Bell Inc. Form 10-K for the year ended December 31, 2008.

[19] Industry Analysis and Technology Division, Wireline Competition Bureau, July 2009, Local Telephone Competition Status as of June 30, 2008, Table 6.

IV. A Waiver is in the Public Interest

In 2007 the Commission found application of the EA Scripting Requirement for the BOCs and their independent ILEC affiliates was no longer justified for several reasons. Specifically, the Commission found that (1) there is significant evidence that the stand-alone long distance market is becoming a fringe market;[20] (2) the minority of consumers that still take stand-alone long distance services now have additional options available for making long distance calls;[21] and (3) competition for stand-alone long distance services would function better absent the potential marketplace-distorting effects of the current EA Scripting Requirement.[22] The findings the Commission made relative to the BOCs and their independent ILEC affiliates are equally applicable to CBT based upon the evidence presented above.

The evidence demonstrates that the market conditions in CBT's territory have changed substantially since the EA Scripting Requirement was first applied to the independent ILECs. The vast majority of consumers prefer to subscribe to plans that bundle local and long distance calling, whether from an ILEC, CLEC, cable operator, wireless provider or VoIP provider. Such bundled plans are readily available from numerous providers in the Cincinnati market. In addition, prepaid calling cards offering low long distance calling rates are readily available at stores throughout the area. Requiring only one company within this market, CBT, to read customers a list of stand-alone wireline long distance providers may be misleading or, at a minimum, confusing to consumers. As the Commission found in the AT&T Forbearance Order, this confusion could cause consumers not to investigate alternative means of placing long distance calls. Thus, rather than assisting consumers in making fully informed choices about

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[20] *AT&T Forbearance Order*, ¶¶ 23, 121.
[21] *Id.*, ¶ 122.
[22] *Id.*

long distance service, maintaining this requirement may actually harm consumers by suggesting that their long distance choices are limited to the standalone wireline providers on the list.

In addition, the EA Scripting requirement imposes additional costs on CBT relative to its competitors. In the current economic environment, when companies are striving to streamline processes to gain efficiencies, requiring a small subset of companies to add additional time to each new service call in order to comply with this requirement places them at a competitive disadvantage relative to other telecommunications providers in the market. Ultimately, these costs get passed through to consumers and, as discussed above, in today's competitive marketplace, there is no offsetting benefit.

If relieved of this EA Scripting Requirement, CBT will still be subject to the equal access and dialing parity provisions of section 251(b) of the Communications Act[23] which ensures that consumers have non-discriminatory access to the long distance provider of their choice.

V. Conclusion.

Based upon the forgoing reasons, the Commission should find that it is in the public interest to grant CBT's request for a waiver of the EA Scripting Requirement.

Respectfully submitted,

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[23] 47 U.S.C. § 251(b)(3).